

Lewis County Planning Commission **Public Meeting**

Lewis County Courthouse
Commissioners' Hearing Room – 2nd Floor
351 NW North St – Chehalis, WA

July 8, 2014 - Meeting Notes

Planning Commissioners Present: Russ Prior, Bob Guenther, Susan Rosbach, Arny Davis, Clint Brown, Richard Tausch

Planning Commissioners Excused: Mike Mahoney

Staff Present: Sheriff Steve Mansfield, Glenn Carter, Lee Napier, Patrick Babineau, Pat Anderson

Consultants Present: John Kliem, Creative Community Solutions

Others Present: Please see sign in sheet

Handouts/Materials Used:

- Agenda
- Meeting Notes from May 13 and June 10, 2014
- Memo from Patrick Babineau
- Memo from Department of Justice
- Washington AGO Opinion
- NY Times article re: Wenatchee
- Seattle Times article re: Wenatchee
- FAQs on I-502
- PowerPoint

1. Call to Order

Vice Chair Brown called the meeting to order at 6:00 p.m. The Commissioners introduced themselves.

2. Approval of Agenda

The agenda was approved as presented.

3. Approval of Meeting Notes

The meeting notes from May 13 and June 10 were approved as presented.

4. Old Business

Ms. Napier stated the public hearing on the Eagle Cliff rezone scheduled for July 29 will not be held and she asked that the date be saved for a workshop on tonight's topic. Staff prepared findings on the rezone and had made considerations based on information available at the time. The attorney representing the neighbors provided a notebook of additional information and after reviewing that information Patrick Babineau is revising the environmental checklist. He will forward that on to Karen Witherspoon who will make a SEPA determination. She will withdraw her original DNS SEPA determination and send the revised one out for agency scoping. There will not be enough time to go through that process and advertise for the July 29 hearing.

Vice Chair Brown stated the public hearing was not held in June because of noticing issues and asked if it had been re-noticed. Ms. Napier stated it had not. As people submit comments Ms. Napier is advising them that the public hearing will not be on July 29 and Mr. Phillips, the attorney representing the neighbors, is also letting people know about the postponement. When the DNS SEPA is withdrawn next week Ms. Napier will let everyone know that we are advancing with the environmental review and that the meeting has been postponed.

5. New Business

A. 1st Workshop on Marijuana Land Use

Ms. Napier stated there is a need to talk about the marijuana land use issue and to decide what the Planning Commission should consider to accommodate this type of use. The purpose of tonight's workshop is to give background on the topic, the legislation and state parameters. Questions will be answered and another workshop will be held on July 29.

Working with Ms. Napier and staff is John Kliem, Creative Community Solutions, who will be the facilitator and land use consultant. He has some familiarity on this topic as he worked with Grays Harbor County through their process on this issue.

Mr. Kliem stated he had a brief presentation and hoped the Planning Commissioners would have an in-depth discussion on regulations Lewis County would like to have place in the future if the production, processing and retailing of recreational marijuana is allowed. He will talk about legislation and the WACs that implement I-502. He would like to hear the hopes and desires of the Planning Commissioners relating to the production and retailing of marijuana.

Mr. Kliem presented the PowerPoint and asked for questions at any time. I-502 passed in November of 2012 with a 55.7% Yes vote statewide; however, in Lewis County it did not pass with a 55.4% No vote.

I-502 set up a system for the licensing of marijuana producers, processors and retailers and the Liquor Control Board developed rules for implementing the new law. All licensed locations have 1,000 linear foot restrictions from schools, playgrounds, recreation centers, child care centers, public parks, transit centers, libraries and arcades for all ages. There is a limit on the number of retailers: 4 at large in the County; 2 in Centralia and 1 in Chehalis. The processing facilities will need approval from the Department of Agriculture; all security provisions for licensed facilities must be met.

Vice Chair Brown asked if anyone had applied for licenses. Ms. Napier stated there have been applications to the Liquor Control Board but none to Lewis County.

Mr. Kliem stated marijuana consumption is still against Federal law. The Department of Justice issued a memo stating that the Attorney General Office's intent is not to prosecute some violations under federal law. The Department of Justice reserves the right to change this position at any time.

A question that has been asked many times is can a county not allow the production, processing and retailing of marijuana. I-502 does not preempt counties, cities and towns from regulating or banning these activities. Lewis County passed Ordinance 1247 establishes a licensing process that requires proof of approval from the US Attorney General or Drug Enforcement Agency. Ordinance 1254 places

moratorium on the issuing of licenses and associated land use. Lewis County is one month into its second six-month moratorium.

There have been some attempts to prevent counties from prohibiting marijuana activities but those House Bills have not passed at this time. Mr. Kliem did not think they ever went to hearing.

Vice Chair Brown stated there are some Washington cities that have a liquor prohibition and asked why the same could not apply to marijuana. Mr. Kliem stated the legislature would need to provide a similar type of provision for marijuana.

Mr. Kliem stated HR 499 has been introduced to the 113th Congress that would remove marijuana from the controlled substance act, leave regulation of marijuana up to the states, and protect the rights of the states to prohibit. Commissioner Guenther stated that both bills were heard on June 30 and no action was taken.

Mr. Kliem stated the next question is why should Lewis County address this issue? The majority of the people voted against it. It is important to look at this for a couple of reasons. Some legislation has come through preempting jurisdictions' powers not to allow it so things could change quickly. If Lewis County had to look at producing, processing and retailing marijuana, how would it do that in a way that is right for its citizens? Discussions would not necessarily lead to adoption in the near future, but you would be prepared in the event that there is a requirement that Lewis County has to allow these types of activities. Being proactive is important while you have the time to look at all the possibilities and develop laws that are appropriate for this county.

Vice Chair Brown stated today was the first day for marijuana sales in the state of Washington. We should know in the next six months what is working and what is not working in the counties that allow those sales. He asked why Lewis County couldn't just wait a few months and then address this issue.

Mr. Kliem stated it would be timely to begin having these discussions. Seeing what happens in those other counties will give Lewis County some insight but it is good to start now. It could move much faster than anticipated – it might be wise to look at this like comprehensive planning 20 years into the future.

Vice Chair Brown asked if the Planning Commission's recommendation wouldn't indicate approval for the growth and sale of marijuana within the county. Mr. Kliem stated that could be a perception; he would look at it as being prepared if the county is forced to do it. It might be wise to put some regulations in place which could take six months. You wouldn't necessarily have to pass something at this time. Make sure you are not rushed when the time comes if the time comes when legislation does preempt local jurisdictions.

Commissioner Guenther stated if he was preparing for something like this he would survey every employer in Lewis County and ask if they would hire someone who smokes marijuana. He would put that out to the public: Do you want to smoke dope? Do you want a job?

Commissioner Davis stated there appears to be legal wrangling between what the Planning Commission recommends to making it legal versus making it very difficult to get licensed. He asked Mr. Carter if he could explain.

Mr. Carter stated the county has effectively banned it. It is difficult to obtain the approval from the US Attorney General in order to grow marijuana under the Controlled Substances Act. However, Congress could change that tomorrow. People are changing their attitudes about many things. We are in the 2nd moratorium and we don't want to do another one. We want to have, in the event that Congress changes the law, a zoning regime as to where this is allowed. We won't approve it until the law changes. But we do want to know where it's going to go and under what conditions and with what restrictions that fit the values of our community. Until the law changes it will remain the way it is now unless the Board changes its opinion. It will continue to be prohibited because it is prohibited under federal law.

Commissioner Davis stated the way it is now is the way to go but it is not an outright ban saying you cannot do this. We are relying on the current federal jurisdiction that says anyone who wants to do this needs their approval.

Mr. Carter clarified. We have the authority under Article 11, Section 11 of the Washington Constitution to exercise the police powers that Mr. Kliem pointed out. We have the right to regulate or to ban a substance like marijuana where it is already regulated by the state and under case law we as a county have the ability to go further. Federal law is incorporated into state law under Article 1, Section 2 which states that the federal law is the supreme law of the land. When people say that state law does not incorporate federal law we disagree with that. There are two sources: the exercise of the police power and that federal law is the supreme law of the land, even though the Attorney General has said he is probably not going to prosecute those that traffic or produce marijuana. It's not only Congress. There is a way for the AG to remove marijuana from the Controlled Substances Act. He has not done that. There are ways to get it off of Schedule 1 but it has not been done thus far. Our fear is that someday it will be and we will read about it in the paper and wonder what we can do.

Commissioner Prior stated he did not hear Mr. Carter say that the Planning Commission's recommendation should be an outright ban on the growth and processing of marijuana. We are a land use body and he thought we should come up with land use policies that control where it can happen in Lewis County if that should come to pass. Mr. Carter stated that is what he would like to see. He hopes that if this is legalized the county will have regulations in place and the rules are clear to everybody. If Congress says it is okay then why would we ace ourselves out of the economic development? We need to provide for the opportunity.

Commissioner Prior asked what happens to the tax revenue if Lewis County is not participating in the industry. Are we losing out or are the taxes distributed between all 39 counties? Mr. Carter did not know the answer to that question.

Mr. Kliem stated that taxes that are levied on marijuana go directly to the state and the state is looking at how to distribute them to the general fund. The WAC also allows cities and counties to levy taxes on marijuana on top of state taxes.

Commissioner Prior asked Sheriff Mansfield if he expected increased enforcement costs whether or not Lewis County participates in the marijuana industry.

Sheriff Mansfield stated all of the sheriffs met with the Liquor Control Board (LCB) to discuss this issue. There will be places licensed to grow, produce and sell marijuana and the competition will be the illegal grower. The LCB requested the sheriff to increase enforcement on the illegal growers. His position is: if the [LCB] is sending a message that this is okay to do because taxes are being paid on it, then to tax his resources to do reinforcement on something they say is okay for our people is ridiculous. Sheriff Mansfield has a lot to do out there: homicides, heroine, etc. He will not expend his resources on people who are growing it in their garage. We are going through rapid social changes. It started with medical marijuana and he fought that but he has learned something about it. He talked to a lot of people who use it who say it helps them – it controls pain and they can still function. His position has softened on medical marijuana but it has not softened on [recreational] marijuana. This is about money. It's about making money off of somebody who has a problem. Money that the state is going to collect is going to go back to the treatment of people who use marijuana who have a problem.

To answer Commissioner Prior's question, Sheriff Mansfield stated he is not going to expend resources on something like this. The people of Lewis County want him to go after the sex offenders and the people who beat their spouses and abuse their children. He turned back the money that was given to the Department for marijuana enforcement because it was not being prosecuted. The Federal Government is not going to come in and arrest anyone even though we are violating federal law. What could happen is the Federal government says they are giving the county money for highways, for social services, for law enforcement and the county takes that money so it is obligated to them. They could start cutting some of those things off. There's a lot happening out there and it will take a while to see the results in other cities. The Commissioners have taken a stand by saying they don't want it here. The majority of the people in Lewis County have said they don't want this and that is why Sheriff Mansfield will continue to fight to not allow it.

Commissioner Davis stated he is about building the economy in Lewis County. All of the taxes and revenue is malarkey. It will do more damage than good when big businesses look at Lewis County and they know that marijuana is going to be in the population that they will be hiring. That will have a negative impact on our economy. Short of a ban, having some control over this is very important. It is a much bigger deal than a few people out there smoking dope. He believes that any money that is generated is going to go back into solving the problem that it created.

Sheriff Mansfield asked if we don't plan do we fail, and if we do plan do we fail because we give the impression that we are getting ready for it. At some point he believes it will be pushed down our throats and it will be decided by someone else. Do we start planning and looking at options now and in a way that doesn't give the impression that we want it here at all. How it happens and where it occurs is important to him. He doesn't want it near the schools or day cares.

Commissioner Guenther stated he is the senior vice president of the Washington State Labor Council. As a board member he is very much in favor of drug testing for all jobs and drug tests take place in the larger industries. He will continue to advocate for that as long as he holds his position.

Vice Chair Brown asked if Lewis County can still say "no" even if the Federal Government makes a change and the Department of Justice removes marijuana from the controlled substances list. Mr. Carter said there is a field preemption and a conflict preemption. If there is a law passed in the legislature that says it preempts the field of marijuana we don't have the authority to say no. If there is

a policy that is adopted at the legislative level and our policy of saying “no” conflicts in such a way that it thwarts the state policy then we can’t say “no” either. We only have the police power under Article 11, Section 11 to the extent that the legislature does not preempt either the field preemption or conflict preemption.

Vice Chair Brown asked if we could look at a two-prong approach. We look at how it can be regulated and also approach our representatives about introducing legislation that would allow us to ban it so it would not be in conflict. Mr. Carter stated the county does not need legislation to say that we can ban marijuana to the extent that we don’t have field preemption or conflict preemption. If you mean when they adopt a law that would preempt us that they would include a provision that we can opt out – yes, he agrees with that. That is what Colorado did; that is not what Washington did. Colorado under their system allowed cities and counties to opt out.

Mr. Kliem asked the Planning Commissioners if they wished to start exploring options for this issue. His role would be to help the Commissioners to determine the theoretical question: if we allow these activities in Lewis County how would that look.

Commissioner Prior stated he owns property in eastern Lewis County and he would like to focus on land use restriction on outdoor growth facilities that help him maintain his quality of life and continue to be able to walk around in his woods safely.

Vice Chair Brown agreed with Commissioner Prior. He also lives in the east end and he does not want people growing marijuana out there. One concern is that by addressing this issue now we are tacitly saying we are approving this issue at some point; the other concern is that this is so new that he is not sure we will be able to envision all of the issues and problems that will come about as a result of trying to legislate the restrictions.

Mr. Kliem stated he would like to work with the Commission to get a sense of what the hopes, desires and concerns are related to this issue. He and staff would develop a wide range of possibilities to see which ones you could choose if your interest is in making these as few and rare as possible in Lewis County. We can come up with a general plan to meet these needs. You can give it a lot of thought and not be rushed.

Commissioner Guenther asked if it was reasonable to say if someone is going to grow marijuana in Lewis County that it has to be in a fully enclosed building, that there must be a 10’ fence and only two entrances; that it is totally isolated and it must generate its own power.

Mr. Kliem stated that is the type of discussion to start with and everyone could share their thoughts.

Commissioner Guenther stated the Sheriff’s department could make a drive around the building to inspect rather than going out into a field.

Mr. Kliem stated recreational marijuana is quite new but there are about 18 states that allow medical marijuana. There has been a lot of research done on what some of the impacts are in relationship to land use and a lot of good ordinances as to how communities have chosen to keep small scale producers

small; how they protect the people who are involved, public services, water, utilities, etc. Techniques that are applied to a comprehensive plan can be applied to recreational marijuana.

Commissioner Prior supported Commissioner Guenther's idea about allowing only indoor growth facilities.

Sheriff Mansfield stated that is likely that is how it will go. Marijuana that is being produced today has a high THC content and a lot of it is because of genetic engineering but also manipulating the grow conditions and cycles – light, heat and humidity. It is very sophisticated. The outdoor grow in the forest lands is not going to be an issue because the dope that is grown for retail not only has a high THC but it is broken down to what makes one high, or laugh or kill pain. It is broken down that far and they manipulate the grow to get the highest THC in the shortest amount of growth cycles. It's all about money and money is what has gotten them this far. He didn't think there would be a big kickback in planning in that direction.

Vice Chair Brown asked the Commissioners if they wished to continue going forward to discuss this issue.

Commissioner Rosbach stated if she understood Mr. Carter correctly, the County can adopt a policy that follows the federal law and as long as the federal law is in place we can ban it from Lewis County but the day the law is changed we should have something in place so everyone is not scrambling. Can we adopt a two-fold policy or land use regulation?

Mr. Carter stated there has been a discussion about the exact mechanism where there is effectively a ban but where something could come into effect immediately if there is a change in the state or federal law. We have talked a little bit about how to do this in the land use portion of our code. Can you write something into code that says on the day that federal law changes that this will become effective? That is a problem that we need to study but that is the result we want. We don't want to legalize marijuana here and we don't want to condone it. We want to keep it banned as long as we have the power to do so. We know that the Planning Commission process takes about 6 months from an application to actually getting it approved by the BOCC. We don't have 6 months so we don't want to wait and start the process at that time. He's not sure how to do that.

Vice Chair Brown asked if the process could be started and rather than present it to the BOCC, withhold it.

Mr. Carter stated, yes, there could be a recommendation and you could delay the transmittal letter. There could be a recommendation that could be quite exhaustive of what you would propose in the event that the law is changed and you would have the work done to your satisfaction. When a change came or appeared to be on the horizon you could initiate the process to the Board for the Board to consider. He's not sure that is the best option, but he deferred to the Community Development Director.

Commissioner Prior asked if staff had started writing regulations. Ms. Napier stated the only regulations that have been worked on are for collective gardens and the business license. The BOCC wants input from the Planning Commission to determine what is appropriate.

Vice Chair Brown stated if the County is going to go forward with this he would like to see what other counties in Washington have done.

Ms. Napier stated information and background could be provided; however she felt that this particular topic is unique to Lewis County and we should take the opportunity to explore. She has found through past experience that when other counties are borrowed from things are often over-looked or limitations might not have been realized by other jurisdictions. It's fine to look and get ideas; she is hearing some great conversation and there are resources available to the Commissioners.

Mr. Carter stated that when the medical marijuana issue came up the Sheriff, Prosecuting Attorney and Community Development Director developed a set of codes. It is appropriate to perhaps start reading those regulations, but remember those are suited to that particular law. It is limited to indoors; it is limited to certain areas; it requires security and surveillance. It has what Commissioner Guenther suggested that may give you something to start your conversation.

Vice Chair Brown asked for further questions. There were none.

Mr. Kliem stated he would like to talk to staff to find out how to prep for the next meeting. He thought the Planning Commission had a good handle on the feelings of the people in Lewis County. He did not think that looking at what Pacific County, Grays Harbor County and King County have done with this issue would benefit Lewis County. He suspected that the tack they took would be completely different from what Lewis County would take. You know your neighborhoods – you can think of other land uses. He will get general thoughts out and work with more specific thoughts and bring ideas back to you. If you do not want nuisance portions of marijuana seep out into other properties: such as odor, noise, lights, road issues - how would you deal with those? This is not like a small farm; it is like a small factory. We will think about what kinds of provisions you want to place on these businesses to ensure that the negative impacts are not extended to the rest of the community.

Commissioner Guenther stated he was in Philadelphia recently and there was an abandoned prison in the middle of the city. He thought that would be an ideal location for this type of situation. We don't have an abandoned prison but maybe there's something similar.

Mr. Kliem stated he and Ms. Napier can send the Planning Commissioners some information. He also recommended that the Commissioners read the newspapers and talk to the counties who have established marijuana businesses. At the next meeting the first focus questions would be the hopes and concerns of regulating marijuana in Lewis County.

Commissioner Guenther stated the 2,000,000 sf allowed county-wide equals about 48 acres. He asked how the projected growth for the county compares to that. If the county expects 100,000 sf of growth, that would take a big bite out of it.

Mr. Kliem reiterated what Sheriff Mansfield stated about the potency and that there is so much packed into a small package that to meet the demand does not require much space.

Vice Chair Brown thanked Mr. Kliem for his input and presentation.

6. Calendar

The next meeting will be a special meeting on July 29, which will be the second workshop on marijuana land use.

7. Good of the Order

Vice Chair Brown wished to thank Sheriff Mansfield for the department's action relating to a theft in Commissioner Brown's neighborhood. Sheriff Mansfield stated that Facebook has been a useful tool for the department.

Ms. Napier also thanked Sheriff Mansfield for his attendance at the meeting. She stated that there is cooperation between departments behind the scenes.

8. Adjourn

There was no other business before the Planning Commission and adjournment was at 7:26 p.m.